

**Before the
Federal Communications Commission
Washington, D.C. 20554**

| | | |
|---|---|----------------------|
| In the Matter of |) | |
| |) | |
| |) | |
| Federal-State Joint Board on |) | |
| Universal Service |) | CC Docket No. 96-45 |
| |) | |
| 1998 Biennial Regulatory Review – |) | |
| Streamlined Contributor Reporting |) | CC Docket No. 98-171 |
| Requirements Associated with Administration |) | |
| of Telecommunications Relay Service, North |) | |
| American Numbering Plan, Local Number |) | |
| Portability, and Universal Service Support |) | |
| Mechanisms |) | |
| |) | |
| Telecommunications Services for Individuals |) | |
| with Hearing and Speech Disabilities, and the |) | CC Docket No. 90-571 |
| Americans with Disabilities Act of 1990 |) | |
| |) | |
| Administration of the North American |) | |
| Numbering Plan and North American |) | CC Docket No. 92-237 |
| Numbering Plan Cost Recovery Contribution |) | NSD File No. L-00-72 |
| Factor and Fund Size |) | |
| |) | |
| Number Resource Optimization |) | CC Docket No. 99-200 |
| |) | |
| Telephone Number Portability |) | CC Docket No. 95-116 |
| |) | |
| Truth-in-Billing and Billing Format |) | CC Docket No. 98-170 |
| |) | |
| |) | |

COMMENTS OF NRTA AND OPASTCO

I. INTRODUCTION AND SUMMARY

The National Rural Telecom Association (NRTA) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)

submit these comments in response to a Commission staff study relating to the alternative methodologies for calculating contributions to the federal universal service support mechanisms.¹ NRTA is an association of incumbent local exchange carriers (ILECs) that obtain financing under Rural Utilities Service (RUS) and Rural Telephone Bank (RTB) programs. OPASTCO is a national trade association representing approximately 500 small ILECs serving rural areas of the United States. All of the members of both associations are rural telephone companies as defined in 47 U.S.C. §153(37). In addition, most of the members of both associations rely on some form of federal universal service funding to provide affordable, high-quality service within their rural territories. Thus, NRTA and OPASTCO have a paramount interest in ensuring the long-term stability and sufficiency of the high-cost universal service program.

NRTA and OPASTCO are not surprised to find that the estimated relative share of contributions for the studied industry segments produced under each of the “connections-based” methodologies demonstrates that only Proposal Two would result in “equitable and nondiscriminatory” contributions from “every carrier providing interstate telecommunications services” as Section 254(d) requires. This alternative splits “connections-based” contributions between switched transport and access providers, so that it directly targets both providers of actual state-to-state transmission links and providers that originate and terminate such calls. Moreover, the staff study also indicates that the two remaining “connections-based” proposals are not rational standards for populating the statutory classification of “every carrier providing interstate telecommunications services.” Hence, these two methods would shift a disproportionately large amount of the contribution burden away from both interexchange

¹ *Commission Seeks Comment on Staff Study Regarding Alternative Contribution Methodologies*, CC Docket No. 96-45, *et.al.*, Public Notice, FCC 03-31 (rel. Feb. 26, 2003) (Staff Study).

carriers (IXCs) and Commercial Mobile Radio Service (CMRS) providers, who collectively provide the lion's share of true state-to-state telecommunications services. This shift would place the bulk of the contribution responsibility upon local exchange carriers (LECs) and their end-user customers, in spite of the fact that exchange access services are merely adjuncts to the interstate services provided by IXCs and CMRS providers. Consequently, it is imperative that the Commission abandon these two fatally flawed alternatives and focus its energies on developing a lawful "connections-based" methodology which would equitably split contributions between all switched transport and access providers.

II. THE STAFF STUDY ILLUSTRATES THAT THE ONLY "CONNECTIONS-BASED" PROPOSAL THAT WOULD PRODUCE "EQUITABLE AND NONDISCRIMINATORY" CONTRIBUTIONS FROM EVERY INTERSTATE TELECOMMUNICATIONS CARRIER IS THE ONE THAT SPLITS CONTRIBUTIONS BETWEEN SWITCHED TRANSPORT AND ACCESS PROVIDERS

In the Second Further Notice of Proposed Rulemaking (SFNPRM) in this proceeding, the Commission sought comment on three "connections-based" universal service contribution methodologies.² NRTA and OPASTCO indicated in their joint comments that only the second of the proposals, which would split contributions between switched transport and access providers, would comply with the requirement in the Telecommunications Act of 1996 (1996 Act) that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, *on an equitable and nondiscriminatory basis*..."³ In addition, NRTA and OPASTCO explained why the remaining two proposed "connections-based" methodologies would unlawfully place the bulk of the contribution responsibility upon LECs and their end-user

² *Federal-State Joint Board on Universal Service, et.al.*, CC Docket No. 96-45, *et.al.*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24985-24986, para. 72 (2002) (SFNPRM).

³ 47 U.S.C. §254(d) (emphasis added). NRTA and OPASTCO Comments on SFNPRM, CC Docket No. 96-45, *et.al.*, p. 4 (fil. Feb. 28, 2003).

customers, even though LECs simply provide exchange access to the carriers that actually transport calls across state lines.⁴

Among other data, the Commission staff study estimates the percentage share of universal service contributions made by IXC, LEC, and CMRS providers under each of the three “connections-based” proposals in the SFNPRM. As a point of comparison, the staff study also provides industry share estimates for the recently modified revenue-based system.⁵

It was interesting, but not surprising, to find that only the “connections-based” methodology that splits contributions between switched transport and exchange access providers (Proposal Two), would result in a distribution of contributions by industry segment that is lawfully equitable and nondiscriminatory. Both the “connections-based” methodology with a mandatory minimum contribution (Proposal One) and the telephone number-based methodology (Proposal Three) would shift the majority or near-majority of the contribution responsibility to LECs, whose primary interstate service is providing exchange access to the carriers that actually transport calls across state lines: IXC and, ever more frequently, CMRS providers. This is not what Congress intended in the clear language of Section 254(d).

Projections from the staff study indicate that, under the first year of Proposal One, industry shares would shift as follows: IXC – 23 percent, LEC – 49 percent, and CMRS – 28 percent.⁶ In the span of just one year, IXC would contribute less than half of what they had for the previous calendar year under the current revenues-based system, with nearly half of the total contribution responsibility being shifted to LECs. Thus, this shift would leave the principal

⁴ NRTA and OPASTCO Comments on SFNPRM, pp. 4, 9.

⁵ For the current 2003 calendar year, the staff study estimates that contributions from IXC will account for 51 percent of total contributions, while LEC and CMRS providers will account for 27 percent and 22 percent, respectively. Staff Study, p. 5.

⁶ *Ibid.*, p. 6.

providers of interstate telecommunications services vastly under assessed vis-à-vis those carriers providing only exchange access services. Indeed, that is what one would expect from a system that targets end-user connections rather than connections to all networks involved in interstate telecommunications, and then tacks on a half-hearted minimum contribution to pick up state-to-state transmission providers omitted by targeting end-user connections. The statute says not only “shall contribute,” but also specifies “on an equitable and nondiscriminatory basis,” not on a “minimum” or poorly targeted basis.

The staff study’s estimates for Proposal Three demonstrate an even more dramatically inequitable and discriminatory transfer of the universal service contribution obligation. This method uses the equivalent of an access network connection, without any effort to rectify the failure to target assessments to the statutory class of all interstate service providers, let alone to calculate and impose assessments “on an equitable and nondiscriminatory basis.” During the first year under a telephone number-based methodology, IXC’s would account for only 14 percent of total contributions, while LEC’s would assume the burden of 58 percent of all contributions.⁷ CMRS providers would account for the remaining 28 percent.⁸ Clearly, this result turns the intent of Section 254(d)’s mandate on its head. LEC’s would shoulder a majority of the universal service contribution obligation, while IXC’s, the quintessential providers of state-to-state telecommunications services, would account for the smallest percentage of the federal fund. Again, a faulty targeting device cannot produce a result that satisfies the statutory requirement.

On the other hand, Proposal Two would result in more equitable and nondiscriminatory

⁷ *Id.*, p. 8.

⁸ *Id.*

contribution shares for each of the industry segments.⁹ In year one of the split “connections-based” methodology, IXC’s would account for 34 percent of total universal service contributions, while LEC’s would contribute 23 percent, and CMRS providers would contribute 41 percent.¹⁰ IXC contributions would continue to account for a significant portion of the fund, in recognition of the fact that these carriers’ interstate networks provide the central link in an interstate call. LEC’s also would contribute a reasonable portion of total assessments, based upon their provision of exchange access services to IXC’s. Splitting “connections-based” assessments reflects the fact that all interstate telecommunications requires both a connection to a local distribution network and a connection to an interstate transport provider.

Under Proposal Two, CMRS providers would contribute a somewhat larger portion of total assessments than they would under either of the other “connections-based” methodologies. This too is a reasonable result considering that wireless carriers provide both the end-user connection and the interstate transport component of an interstate call. Thus, under Proposal Two, CMRS providers are appropriately assessed double the amount per connection as compared to both IXC’s and LEC’s.¹¹

As the Commission has previously recognized, virtually all of the major wireless carriers now offer bundled local and national long distance services for one flat rate.¹² As a result, greater numbers of consumers are finding it to their advantage to use wireless services to make

⁹ NRTA and OPASTCO explained in their comments in response to the SFNPRM that further study and refinements are necessary to make this proposal’s capacity-based tiers “equitable and nondiscriminatory.” NRTA and OPASTCO Comments on SFNPRM, p. 7.

¹⁰ *Id.*, p. 7.

¹¹ Similarly, when a LEC or an IXC provides its customers with both exchange access and interstate transport services, they too are assessed for each of these components. As more and more LEC’s and IXC’s choose to bundle local and long distance services, the contribution shares for each industry segment should become more balanced.

¹² *Federal-State Joint Board on Universal Service, et.al.*, CC Docket No. 96-45, *et.al.*, Further Notice of Proposed Rulemaking, 17 FCC Rcd 3752, 3758, para. 12 (2002) (FNPRM).

interstate calls.¹³ This phenomenon helps to account for the Commission's previous finding that overall interstate revenues have been declining for IXC's.¹⁴ Therefore, only Proposal Two continues to fairly assess IXC's for their quintessential role in transporting interstate traffic, while at the same time shifting a larger share of the contribution responsibility to CMRS providers, in recognition of the fact that wireless carriers account for a growing share of interstate telecommunications services.

¹³ SFNPRM, 17 FCC Rcd 24965, para. 21.

¹⁴ FNPRM, 17 FCC Rcd, 3755-3756, para. 7

III. CONCLUSION

The results of the Commission's staff study support NRTA and OPASTCO's prior comments in this proceeding that the only a "connections-based" proposal that would split contribution responsibilities between providers of interstate transmission and switched access services could satisfy the 1996 Act's mandate of equitable and nondiscriminatory contributions. Therefore, the Commission should devote its attention to perfecting Proposal Two and reject each of the remaining "connections-based" proposals, as they are unlawful and inherently flawed.

Respectfully submitted,

NATIONAL RURAL TELECOM ASSOCIATION

By: \s\ John F. O'Neal
John F. O'Neal

One Massachusetts Avenue, NW
Suite 800
Washington, DC 20001
(202) 628-0210

THE ORGANIZATION FOR THE
PROMOTION AND ADVANCEMENT OF
SMALL TELECOMMUNICATIONS
COMPANIES

By: \s\ Stuart Polikoff
Stuart Polikoff
Jeffrey W. Smith

21 Dupont Circle NW
Suite 700
Washington, DC 20036
(202) 659-5990

April 18, 2003

CERTIFICATE OF SERVICE

I, Jeffrey W. Smith, hereby certify that a copy of the joint comments by the National Rural Telecom Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, on this, the 18th day of April, 2003, to those listed on the attached list.

By: /s/ Jeffrey W. Smith
Jeffrey W. Smith

SERVICE LIST

**CC Docket Nos. 96-45, 98-171, 90-571, 92-237,
99-200, 95-116, and 98-179**

FCC 03-31

Kathleen Q. Abernathy,
Commissioner and Chair
Joint Board on Universal Service
Federal Communications Commission
445 12th Street, S.W., Room 8-B115
Washington, D.C. 20554

Kevin J. Martin,
Commissioner
Federal Communications Commission
445 12th Street, S.W., Room 8-A204
Washington, D.C. 20554

Michael J. Copps,
Commissioner
Federal Communications Commission
445 12th Street, S.W., Room 8-A302
Washington, D.C. 20554

Jonathan Adelstein,
Commissioner
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington, D.C. 20554

Bob Rowe,
Commissioner
Montana Public Service Commission
1701 Prospect Avenue
P.O. Box 202601
Helena, MT 59620-2601

Nanette G. Thompson,
Chair
Regulatory Commission of Alaska
1016 West Sixth Avenue, Suite 400
Anchorage, AK 99501-1693

Chairman Michael Powell
Federal Communications Commission
445 12th Street, S.W., Room 8-B201
Washington, D.C. 20554

Lila A. Jaber, Commissioner
Florida Public Service Commission
2540 Shumard Oak Boulevard
Gerald Gunter Building
Tallahassee, FL 32399-0850

J. Thomas Dunleavy, Commissioner
New York Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Greg Fogleman,
Economic Analyst
Florida Public Service Commission
2540 Shumard Oak Boulevard
Gerald Gunter Building
Tallahassee, FL 32399-0850

Mary E. Newmeyer,
Federal Affairs Advisor
Alabama Public Service Commission
100 N. Union Street, Suite 800
Montgomery, AL 36104

Larry Stevens,
Utility Specialist
Iowa Utilities Board
350 Maple Street
Des Moines, IA 50319

Joel Shifman,
Senior Advisor
Maine Public Utilities Commission
242 State Street
State House Station 18
Augusta, ME 04333-0018

Carl Johnson,
Telecom Policy Analyst
New York Public Service Commission
3 Empire State Plaza
Albany, NY 12223-1350

Peter Bluhm,
Director of Policy Research
Vermont Public Service Board
Drawer 20
112 State Street, 4th Floor
Montpelier, VT 05620-2701

Lori Kenyon,
Common Carrier Specialist
Regulatory Commission of Alaska
1016 West Sixth Avenue, Suite 400
Anchorage, AK 99501-1693

Charlie Bolle,
Policy Advisor
Nevada Public Utilities Commission
1150 E. Williams Street
Carson City, NV 89701-3105

Jennifer Gilmore,
Principal Telecommunications Analyst
Indiana Utility Regulatory Commission
Indiana Government Center South
302 West Washington Street, Suite E306
Indianapolis, ID 46204

Peter Pescosolido,
Chief, Telecom & Cable Division
State of Connecticut
Dept. of Public Utility Control
10 Franklin Square
New Britain, CT 06051

Michael Lee,
Technical Advisor
Montana Public Service Commission
1701 Prospect Avenue
P.O. Box 202601
Helena, MT 59620-2601

Jeff Pursley
Nebraska Public Service Commission
300 The Atrium, 1200 N. Street
P.O. Box 94927
Lincoln, NE 68509-4927

Billy Jack Gregg
Consumer Advocate Division
Public Service Commission of
West Virginia
723 Kanawha Boulevard, East
7th Floor, Union Building
Charleston, West Virginia 25301

Philip McClelland
Assistant Consumer Advocate
Pennsylvania Office of Consumer
Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923

Barbara Meisenheimer,
Consumer Advocate
Missouri Office of Public Counsel
301 West High Street, Suite 250
Truman Building
P.O. Box 7800
Jefferson City, MO 65102

Earl Poucher,
Legislative Analyst
Office of the Public Counsel
State of Florida
111 West Madison, Room 812
Tallahassee, FL 32399-1400

Brad Ramsay,
General Counsel
NARUC
1101 Vermont Avenue, N.W.
Suite 200
Washington, D.C. 20005

David Dowds,
Public Utilities Supervisor
Florida Public Service Commission
2540 Shumard Oak Boulevard
Gerald Gunter Building
Tallahassee, FL 32399-0850

Matthew Brill,
Legal Advisor
Federal Communications Commission
445 12th Street, S.W., Room 8-B115
Washington, D.C. 20554

Daniel Gonzalez,
Senior Legal Advisor
Federal Communications Commission
445 12th Street, S.W., Room 8-A204
Washington, D.C. 20554

Lisa Zaina,
Senior Legal Advisor
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington, D.C. 20554

Carol Matthey,
Deputy Bureau Chief
Federal Communications Commission
Wireline Competition Bureau
445 12th Street, S.W., Room 5-C451
Washington, D.C. 20554

Katherine Schroder,
Senior Advisor
Federal Communications Commission
Wireline Competition Bureau
445 12th Street, S.W., Room 5-A426
Washington, D.C. 20554

Sharon Webber,
Deputy Division Chief
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-A425
Washington, D.C. 20554

Eric Einhorn,
Division Chief
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-A426
Washington, D.C. 20554

Bryan Clopton,
Mathematician
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-A465
Washington, D.C. 20554

Anita Cheng,
Assistant Division Chief
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-A445
Washington, D.C. 20554

Shannon Lipp,
Attorney
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-A523
Washington, D.C. 20554

Katie King,
Attorney
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-B544
Washington, D.C. 20554

Geoff Waldau,
Economist
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-B524
Washington, D.C. 20554

Dana Walton-Bradford,
Attorney
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-A314
Washington, D.C. 20554

William Scher,
Assistant Division Chief
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-B550
Washington, D.C. 20554

Paul Garnett,
Attorney
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-A623
Washington, D.C. 20554

Diane Law Hsu,
Deputy Division Chief
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 6-A360
Washington, D.C. 20554

Jennifer Schneider
Attorney
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 6-C212
Washington, D.C. 20554

Sheryl Todd
Telecommunications Access
Policy Division
Federal Communications Commission
445 12th Street, S.W., Room 5-B540
Washington, D.C. 20554

Qualex International
Portals II
445 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554